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Letter Ruling 81-47: Sale to Foreign Vendor for Resale Outside the Commonwealth

June 5, 1981

Your client conducts sales at auction of heavy equipment in Massachusetts. You inquire whether the sale of equipment at such an auction to an out-of-state equipment dealer ("Purchaser") who is registered as a vendor in his home state but not in Massachusetts is exempt from the Massachusetts sales tax, where the Purchaser presents a resale certificate from his home state and purchases the equipment for resale outside Massachusetts.

It is assumed for purposes of this ruling that the Purchaser is not engaged in business in Massachusetts within the meaning of Chapter 64H, Section 1(5).

Massachusetts General Laws Chapter 64H, Section 2 imposes an excise upon sales at retail of tangible personal property in Massachusetts by any vendor. "Sale at retail" is defined in Chapter 64H, Section 1(13) as a sale of tangible personal property for any purpose other than resale in the regular course of business.

Section 7 of Chapter 64H provides that no person shall do business in Massachusetts as a vendor unless a registration shall have been issued to him for each place of business in accordance with Chapter 62C, Section 67, which requires each vendor to file an application for a registration certificate with the Massachusetts Commissioner of Revenue.

Under Chapter 64H, Section 8, the burden of proving that a sale of tangible personal property by any vendor is not a sale at retail is upon the vendor unless he obtains a resale certificate from the purchaser; the certificate relieves the vendor from the burden of proof only if taken in good faith from a vendor who holds a registration certificate issued under Section 7.

Based on the foregoing, it is ruled that the sale by the auctioneer will be presumed to be subject to tax unless the Purchaser registers as a Massachusetts vendor and presents a Massachusetts resale certificate pursuant to the sale. The auctioneer may overcome this presumption by accepting in good faith from the Purchaser a notarized statement on the Purchaser's letterhead that he is not engaged in business in Massachusetts within the meaning of Chapter 64H, Section 1(5), and that he is purchasing the equipment solely for resale outside Massachusetts, and a copy of the Purchaser's out-of-state registration or permit.

Very truly yours,

/s/L. Joyce Hampers

L. Joyce Hampers

Commissioner of Revenue

LJH:JXD:mf

LR-81-47

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